

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ALLEN MARION,

Petitioner,

v.

Civil No. 2:12-CV-13127

HONORABLE VICTORIA A. ROBERTS

UNITED STATES DISTRICT JUDGE

JEFFREY WOODS,

Respondent,

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**OPINION AND ORDER TRANSFERRING THE RULE 60(B) MOTION FOR  
RELIEF FROM JUDGMENT [DKT. # 52] TO THE COURT OF APPEALS**

This Court granted Petitioner a conditional writ of habeas corpus, holding that Petitioner was denied the effective assistance of trial counsel because his attorney failed to investigate and present an alibi defense. *Marion v. Woods*, 128 F Supp. 3d 987 (E.D. Mich. 2015). The Sixth Circuit reversed the decision. *Marion v. Woods*, 663 F. App'x. 378 (6th Cir. 2016); *cert. den.* 137 S. Ct. 2291 (2017).

Petitioner filed a Rule 60(b) motion for relief from judgment. Petitioner alleges that the Michigan Assistant Attorney General committed a fraud upon the court before the United States Court of Appeals for the Sixth Circuit during the appeal of this Court's decision to grant habeas relief. Petitioner specifically alleges that the Assistant Attorney General mislead the Sixth Circuit Court of Appeals by concealing or withholding an affidavit that Petitioner supplied to this Court and to the state courts which supported his ineffective assistance of counsel claim. Petitioner argues that had this affidavit not been

concealed by the Assistant Attorney General, the Sixth Circuit would have affirmed the decision to grant habeas relief.

“A motion brought pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for relief from a court order should be addressed to the court which entered the order.”

*Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499, 500 (E.D. Wis. 1978), *aff’d sub nom. Porcelli v. Jos. Schlitz Brewing Co.*, 588 F.2d 838 (7th Cir. 1978). Petitioner moved for relief from judgment based on an alleged fraud committed upon the Sixth Circuit; this Court is not the proper forum for the Rule 60(b) motion. *Id.*

A district court has the discretion, pursuant to 28 U.S.C. § 1631, to transfer a case improperly filed in the district, in the interests of justice, to the proper court where the case or motion could have been filed. The Court orders the Clerk of the Court to transfer the motion for relief from judgment to the Sixth Circuit.

The Court **ORDERS** that:

The Clerk of the Court shall transfer The Rule 60(b) motion for relief from judgment [Dkt. # 52] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

S/Victoria A. Roberts  
**HON. VICTORIA A. ROBERTS**  
**UNITED STATES DISTRICT JUDGE**

Dated: June 11, 2018